Office-Supreme Court, U.S.
FILED
AUG 17 1964
JOHN F. DAVIS, CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

No. 116

THOMAS J. CRIDER,

Petitioner,

vs.

ZURICH INSURANCE COMPANY,

Respondent.

PETITIONER'S BRIEF ON THE MERITS

J. TERRY HUFFSTUTLER
First National Building
Birmingham, Alabama
Counsel for Petitioner

Of Counsel:

MAX C. POPE
LEVINE, FULFORD, GWALTNEY & POPE
510 Frank Nelson Building
Birmingham, Alabama

INDEX

Subject Index

	Page
Petitioner's Brief	1
Opinions	1
Jurisdiction	1
Constitutional and statutory provisions involved	2
Questions presented	2
Statement of the case	3
Summary of Argument	4
I. The Alabama court is free to enforce the Georgia Compensation Act, and the enforcement does not violate the United States Constitution	5
II. Each state is free to adopt such rules of conflict of law or choice of laws as it chooses so long as the rules do not violate the United States Constitution	12
III. The Court of Appeals denied to the Alabama Court the right to determine what aspects of the Georgia Compensation Act were matter of procedure and what were substantive matters	19
IV. The Court of Appeals was in error in denying full faith and credit to the *judgment* of the Circuit Court of DeKalb County, Alabama	23
Conclusion	25
Appendix A:	
Constitutional and Statutory Provisions Involved	27

Cases Cited

	Page
Alaska Packers Asso. v. *Industrial Acci. Comm.*, 294 U.S. 532 (1935)	4, 5, 6, 9, 16, 22, 24, 25, 26
Babcock v. *Jackson*, 191 N.E. 2d 279 (1963)	21, 22
Carroll v. *Lanza*, 349 U.S. 408 (1954)	4, 7, 8, 9, 15, 17, 18, 22, 25, 26
Cooper v. *Newell*, 173 U.S. 555 (1898)	23
Dollahite-Levy Co. v. *Overton*, 233 Ala. 12, 133 So. 903 (1931)	19
Erie R.R. Co. v. *Thompkins*, 303 U.S. 498 (1953)	14
Galveston, H. & S. A. R. Co. v. *Wallace*, 223 U.S. 481 (1911)	12
Green v. *J. A. Jones Constr. Co.* (C.C.A. 5, 1947), 161 F. 2d 359	6, 7, 13, 14, 17, 24
Griffin v. *McCoach*, 313 U.S. 498 (1941)	14
Kenny v. *Loyal Order of Moose*, 252 U.S. 410 (1920)	14
Kilberg v. *Northeast Airlines, Inc.*, 9 N.Y. 2d 34, 172 N.E. 2d 526 (1961)	20
Moran v. *Pittsburg-Des Moines Steel Co.* (C.C.A. 3, 1948), 166 F. 2d 908	19, 20
Pacific Employers Ins. Co. v. *Industrial Acci. Comm.*, 306 U.S. 493 (1938)	4, 5, 6, 9, 13, 14, 15, 22, 23, 24, 25, 26
Pearson v. *Northeast Airlines, Inc.*, 309 F. 2d 553 (1962)	16, 18, 19, 20, 21, 22, 26
Pritchard v. *Norton*, 106 U.S. 124 (1882)	19
Richards v. *U. S.*, 369 U.S. 1 (1962)	15
T. C. I. v. *George*, 233 U.S. 354 (1914)	11
Wells v. *Simonds Abrasive Co.*, 345 U.S. 514 (1953)	12, 13, 15, 18, 19

Statutes Cited

Alabama Code, Tit. 7, Sec. 97	9
Alabama Code, Tit. 26, Sec. 297	10
Alabama Code, Tit. 49, Sec. 17 (14)	9
Georgia Code, 114-103	6, 8, 14, 15
Georgia Code, 114-404	17

Page

Georgia Code, 114-411 10
Georgia Code, 114-705 10
Georgia Code, 114-706 ..... 11, 12, 18
Missouri Revised Statutes, Sec. 287, 120 (2) 8
28 U.S.C., Sec. 1254 (1) 1
28 U. S. C., Sec. 1332 3
28 U. S. C., Sec. 1738 23

Constitutions Cited

Alabama Constitution, Article VI, Sec. 143 11
United States Constitution, Fourth Article, Sec. 1 23

Periodical Cited

6 *Alabama Law Review* 84 (1953) 14

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

No. 116

THOMAS J. CRIDER,

Petitioner,

vs.

ZURICH INSURANCE COMPANY,

Respondent.

PETITIONER'S BRIEF ON THE MERITS

Opinions Below

The *judgment* of the Circuit Court of DeKalb County, Alabama (R. 13-14; Resp. Ex. B); the order and opinion of the District Court (R. 23-25, 224 F. Supp. 87); and the opinion of the Fifth Circuit Court of Appeals (R. 28; 324 F. 2d 499).

Jurisdiction

The opinion and judgment (R. 28; 324 F. 2d 499) of the Fifth Circuit Court of Appeals was entered on November 21, 1963. The jurisdiction of this Court is invoked under 28 U.S.C.A., Sec. 1254 (1), and said Court granted Petitioner a writ of certiorari on May 25, 1964 (R. 30).

Constitutional and Statutory Provisions Involved

In accordance with Rule 40 (1) (c) of the Supreme Court Rules and due to length of the constitutional and statutory provisions involved in this case, said provisions are set out verbatim in Appendix A of this Brief.

Questions Presented

Circumstances of the Case

Petitioner was awarded a *judgment* in the Circuit Court of DeKalb County, Alabama, based on the Georgia Workmen's Compensation Act (R. 13-14; Resp. Ex. B), and sought to enforce the *judgment* in the United States District Court for the Northern District of Alabama. Petitioner's complaint was dismissed (R. 23-25; 224 F. Supp. 87), and the United States Court of Appeals for the Fifth Circuit affirmed the District Court (R. 28; 325 F. 2d 499).

The Questions

1. Was the Alabama Court free to enforce the Georgia Compensation Act so long as the enforcement did not violate the United States Constitution?

2. Does the decision of the Court below deny to the State of Alabama the freedom to adopt such rules governing conflict of laws as it chooses?

3. Does the Court of Appeals deny to the State of Alabama the right to determine what aspects of a foreign statute were merely matters of procedure, and what were substantive matters?

4. Was the Court of Appeals' judgment in error in denying Full Faith and Credit to the *judgment* of the Circuit Court of DeKalb County, Alabama?

Statement of the Case

Petitioner filed a suit against A. H. Lawler Construction Company, Inc., a corporation, in the Circuit Court of DeKalb County, Alabama, to recover for injuries sustained in the State of Alabama (R. 15-18; Resp. Exs. A & B). The Respondent had issued a workmen's compensation insurance policy to A. H. Lawler Construction Company, Inc. The Honorable W. M. Beck made a special appearance as attorney for Lawler Construction Company and/or Respondent, but was later permitted to withdraw from the case (R. 13-14; Resp. Ex. B). On February 1, 1959, Petitioner was awarded a *judgment* by the Circuit Court of DeKalb County, Alabama, and said *judgment* was based on the Georgia Workmen's Compensation Law (R. 13-14; Resp. Ex. B). Petitioner filed a complaint in the United States District Court for the Northern District of Alabama, on March 14, 1963 (R. 3-5) to compel the Respondent to satisfy said *judgment*.

Jurisdiction of the United States District Court was invoked under 28 U.S.C.A., Sec. 1332, due to Petitioner being a citizen of the State of Alabama; the Respondent being a corporation organized and existing under the laws of Switzerland and the State of Illinois having its principal place of business in Chicago, Illinois, and the amount in controversy, other than interest and cost, exceeded Ten Thousand and No/100 Dollars ($10,000.00) (R. 3).

Respondent filed a motion to dismiss (R. 6-21), and Petitioner filed an alternative motion for judgment on the pleadings or summary judgment (R. 22-23).

The District Court, by its judgment dated May 16, 1963, granted Respondent's motion to dismiss (R. 23-25; 224 F. Supp. 87). A timely notice of appeal was filed on June 5, 1963 (R. 26). The Fifth Circuit Court of Appeals affirmed the decision of the District Court on November 21, 1963 (R. 28; 324 F. 2d 499), and this Court granted Petitioner a writ of certiorari May 25, 1964 (R. 30).

Summary of Argument

Summarized, Petitioner's argument is:

1. Petitioner sought damages in a Circuit Court in Alabama, the State of his residence and the situs of his injury, under the Georgia Compensation Act. Weighing the governmental interests of the State of Alabama,[1] the Alabama Court rendered *judgment* for Petitioner under the Georgia Compensation Act. The enforcement of said Act and of the *judgment* rendered thereunder did not violate the Full Faith and Credit clause.

2. The Alabama Court was free to adopt such choice of laws as it saw fit, even to the point of qualifying or denying to either party the rights arising from the Georgia Compensation Act, so long as the denial or qualification did not violate the United States Constitution.

3. The Alabama Court had the right to determine that the *permissive* provision in the Georgia Compensation Act permitting a hearing before the Georgia Board was purely

---

[1] The following decisions of this Court authorized the Alabama Court to accord Petitioner his damages under the Georgia Compensation Act: *Alaska Packers Asso.* v. *Industrial Acci. Comm.*, 294 U.S. 532, 79 L. Ed. 1044 (1935); *Pacific Employers Ins. Co.* v. *Industrial Acci. Comm.*, 306 U.S. 493, 83 L. Ed. 940 (1938); *Carroll* v. *Lanza*, 349 U.S. 408, 99 L. Ed. 1183 (1954).

a matter of procedure and was not a part of the substantive law of Georgia.

4. While Georgia can create a substantive cause of action and limit its enforcement *in Georgia* to procedure prescribed, it cannot thereby deprive Alabama courts of the jurisdiction given them by the Alabama Constitution to enforce the substantive transitory cause of action created by Georgia.

5. The *judgment* rendered by the Alabama Circuit Court based on the Georgia Compensation Act could not be denied enforcement merely because the Georgia courts could not enforce the Act in an original action.

Original jurisdiction of the Alabama court was determined by the Alabama Constitution that created it and not the Georgia Act that created Petitioner's cause of action.

The Alabama court had original jurisdiction over Petitioner's cause of action and the *judgment* rendered thereby was to be accorded Full Faith and Credit.

I.

The Alabama Court Is Free to Enforce the Georgia Compensation Act, and the Enforcement Does Not Violate the United States Constitution.

The Supreme Court in *Alaska Packers Asso.* v. *Industrial Acci. Comm., supra,* and in *Pacific Employers Ins. Co.* v. *Industrial Acci. Comm., supra,* was confronted with the problem whether the forum state should use its own compensation act or the compensation act of a sister state.

The Court in *Alaska Packers Asso.* v. *Industrial Acci. Comm.,* said:

"... the *compensation acts* or *either jurisdiction* may consistently with due process, be *applied in either* [State] . . . " 294 U.S. 532, at p. 544. (Emphasis supplied.)

And in *Pacific Employers Ins. Co.* v. *Industrial Acci. Comm.*, this Court said:

"... *either state* . . . would *be free to adopt and enforce the remedy provided by* the *statute of the other* [State] . . . " 306 U.S. 493, at p. 500. (Emphasis supplied.)

The DeKalb County Circuit Court did enforce the Georgia Compensation Act just as this Court said it may do and awarded Petitioner a *judgment* (R. 13-14; Resp. Ex. B). In the light of the foregoing decisions how could the Court of Appeals hold, as it did, that the Alabama Court could not enforce the Georgia Act?

The Court of Appeals stated it was controlled in this case by its decision in *Green* v. *J. A. Jones Construction Company*, 161 F. 2d 359 (1947), where a Federal District Court sitting in Mississippi was affirmed for dismissing a complaint seeking recovery under the Georgia Compensation Act. In deciding the *Green* case, the court relied on Chapter 114-103, *Georgia Code*, which provides as follows:

"The rights and remedies herein granted to an employee where he and his employer have accepted the provisions of this title, agreeing respectively to accept and pay compensation on account of personal injury or death by accident, shall exclude all other rights and remedies of such employee, his personal representative, parents, dependents, or next of kin, at common law or otherwise, on account of such injury, loss of service or death."

However, the Supreme Court in *Carroll* v. *Lanza, supra,* repudiated this reasoning. A similar "exclusive" section of Missouri's Compensation Act was claimed to be a bar to a common-law action in Arkansas, but the Court said:

> "... the *Pacific Employers Insurance Company* case teaches, she [forum state] may *supplement* it [foreign compensation act] or *displace* it with another, insofar as remedies for acts occurring within her boundaries are concerned. Were it otherwise, the State where the injury occurred would be powerless to provide any remedies or safeguards to nonresident employees working within its border. We *do not* think the *Full Faith and Credit clause* demands that subserviency from the State of the injury." 349 U.S. 408, at p. 414. (Emphasis supplied.)

Since the Court of Appeals in *Green, supra,* and here (324 F. 2d 499), said a sister state (Alabama) was bound by this "exclusive" section of the foreign (Georgia) compensation act, and the Supreme Court in *Carroll* v. *Lanza,* said the sister state (Arkansas) *was not* bound by the "exclusive" section of the Missouri Compensation Act, Petitioner now sets out each "exclusive" section for this Court to compare:

The Supreme Court in *Carroll* v. *Lanza* said this Missouri "exclusive" statute did not prevent the Missouri Compensation Act from being *displaced* or *supplemented* in Arkansas. The statute says:

The Court of Appeals said this Georgia "exclusive" statute precluded Petitioner's *judgment* from being enforced, and precluded plaintiff's cause of action in *Green.* The statute says:

"The rights and remedies herein granted to an employee shall exclude all other rights and remedies of such employee, his wife, her husband, parents, personal representatives, dependents, heirs or next of kin, at common law or otherwise, on account of such accidental injury or death, except such rights and remedies as are not provided for by this chapter." Sec. 287, 120 (2), *Missouri Revised Statutes* (1959).

"The rights and remedies herein granted to an employee where he and his employer have accepted the provisions of this Title, agreeing respectively to accept and pay compensation on account of personal injury or death by accident shall exclude all other rights and remedies of such employee, his personal representative, parents, dependents, or next of kin, at common law or otherwise, on account of such injury, loss of service or death." Chapter 114-103, *Georgia Code.*

What is the difference? What is there about these statutes that permits the Court of Appeals to reach a different conclusion from the Supreme Court?

Further, the Court in *Carroll* v. *Lanza,* said:

> "Missouri [Georgia] can make her compensation act *exclusive* if she chooses, and *enforce* it as she pleases *within her borders.* Once that *policy* is *extended to other states, different considerations come into play.*" 349 U.S. 408, at p. 413. (Emphasis supplied.)

What are those "different considerations" that permit the sister state (Alabama) to disregard the entire foreign compensation act, or "supplement" it?

The "different considerations" of the State of Alabama are:

1. Petitioner was injured in the State of Alabama. (R. 4, 11-21; Resp. Exs. A & B.)

2. Petitioner was and still is a resident of the State of Alabama. (R. 3-5, 11-15; Resp. Exs. A & B.)

3. Petitioner's employer was doing business in the State of Alabama. (R. 4, 11-15; Resp. Exs. A & B.)

4. The State of Alabama has an interest in protecting employees working within its borders and especially resident employees. (See *Alaska Packers Asso.* v. *Industrial Acci. Comm., supra; Pacific Employers Co.* v. *Industrial Acci. Comm., supra; Carroll* v. *Lanza, supra.*)

5. As a totally disabled indigent, Petitioner is subject to support under the Public Welfare Laws of the State of Alabama. (See *Alabama Code,* Tit. 49, Sec. 17 (14) (1940) (Recomp. 1958).)

6. The Legislature of Alabama has enacted a statute making it mandatory for the Alabama courts to enforce foreign created causes of action.[2]

As against these overwhelming Alabama "considerations," the only Georgia connection with this case was the fact that Petitioner was entitled to damages under the Georgia Compensation Act for his injuries.[3]

---

[2] The statute provides:

"Whenever, either by common law or statutes of another state, a cause of action, either upon contract, or in tort, has arisen, in such other state against any person or corporation, the *cause of action shall be enforced within the courts of this state,* in any county in which jurisdiction of the defendant can be legally obtained if the cause of action had arisen in this state." *Alabama Code,* Tit. 7, Sec. 97 (1940) (Recomp. 1958). (Emphasis supplied.)

[3] "Where an accident happened while the employee is employed elsewhere than in this State, which would entitle him or his

Once the Circuit Court in Alabama weighed the foregoing "considerations" or governmental interests of Alabama, the Circuit Court in Alabama had no choice but to award Petitioner the damages to which he was entitled under the Georgia Compensation Act.

The only "supplement" it made to the Georgia Compensation Act was to give Petitioner a hearing[4] of his disputed[5] claim for his injuries before an Alabama Circuit

---

dependents to compensation if it had happened in this State, the employee or his dependents shall be entitled to compensation, if the contract of employment was made in this State, and if the employer's place of business is in this State or if the residence of the employee is in this State: Provided, his contract of employment was not expressly for service exclusively outside of the State: Provided, however, that if an employee shall receive compensation or damages under the laws of any other State, nothing herein contained shall be construed so as to permit a total compensation for the same injury greater than is provided for in this Title." Chapter 114-411, *Georgia Code*.

[4] The Compensation Act of Alabama provides: "In case of a dispute between employer and employee or between the dependents of a deceased employee and his employer with respect to the right to compensation under articles 1 and 2 of this chapter . . . *either party may submit the controversy to the Circuit Court of the county which would have jurisdiction of a civil case in tort between the parties . . .*" Tit. 26, Sec. 297, *Alabama Code* (1940) (Recomp. 1958). (Emphasis supplied.)

[5] Petitioner's claim must have been disputed because Chapter 114-705, *Georgia Code*, provides as follows as to an agreement regarding Petitioner's claim for his injuries:

"If after 14 days from the date of injury, or at any time in case of death, the employer and the injured employee or his dependents reach an agreement in regard to compensation under this Title, a memorandum of the agreement in the form described by the State Board of Workmen's Compensation shall be filed with the Board for approval as herein provided; otherwise such agreement shall be voidable by the employee or his dependents. If approved by the Board thereupon the memorandum shall for all purposes be enforced by decree or judgment of the superior court, as herein specified."

Court rather than before Georgia's State Board of Workmen's Compensation. The Georgia Compensation Act provides for a permissive hearing before the Board in the following language:

> "If the employer and the injured employee . . . fail to reach an agreement in regard to compensation under this Title . . . either party *may* make application to the Board for a hearing in regard to the matters at issue, and for a ruling thereon . . . " Chapter 114-706, *Georgia Code*. (Emphasis supplied.)

Respondent argues that the "exclusive" section and the implication of Chapter 114-706, *Georgia Code*, deprives the Circuit Courts of Alabama of jurisdiction over claims arising from the Georgia Compensation Act (R. 6-10); but the statutes enacted by the Georgia legislature cannot determine the jurisdiction of the Alabama courts. In *T. C. I.* v. *George*, 233 U.S. 354, 58 L. Ed. 997 (1914), this Court said:

> ". . . *jurisdiction* is to be *determined by* the *law* of the *courts' creation*[6] and *cannot be defeated* by the *extra-territorial operation* of a *statute of another state*, even though it created the right of action." 233 U.S. 354, at p. 360. (Emphasis supplied.)

---

[6] The *Alabama Constitution* created the Circuit Courts and does not deny original jurisdiction to the Circuit Courts on any claim unless it is less than fifty dollars. The provision of the *Alabama Constitution* specifying the Circuit Court's jurisdiction says:

> "The Circuit Court shall have original jurisdiction in all matters civil and criminal within the state not otherwise excepted in this Constitution; but in civil cases other than suit for libel, slander, assault and battery, and ejectment, it shall have no original jurisdiction except where the matter of sum in controversy exceed fifty dollars. *Alabama Constitution* Article VI, Sec. 143.

We are confronted with the "naked question" whether the forum state (Alabama) violated the Full Faith and Credit clause, when it provided Petitioner a hearing before a Circuit Court in Alabama, to enforce his just claim for his injuries; thereby displacing or disregarding the implication[7] of Chapter 114-706, of the *Georgia Code*, which provides that an employee "may make application" for a hearing before the Board in Georgia.

The Alabama Circuit Court weighed the "considerations" of the State of Alabama, and "turning the scale of decision according to their weight", it had no choice but to award Petitioner his damages. In doing so, it did not violate the Full Faith and Credit clause.

The *judgment* was rendered in accordance with the decisions of this Court, and without any constitutional rights being denied to Respondent. The *judgment* should have been enforced by the Court of Appeals for the Fifth Circuit.

II.

Each State Is Free to Adopt Such Rules of Conflict of Law or Choice of Laws as It Chooses So Long as the Rules Do Not Violate the United States Constitution.

This Court has repeatedly held that each state was free to adopt such rules of conflict of laws or choice of laws it may choose. The Supreme Court in *Wells v. Simonds Abrasive Company*, 345 U.S. 514, 97 L. Ed. 1213 (1953), said:

> "The states are free to adopt such rules of conflict of laws as they choose, *Kryger* v. *Wilson*, 242 U.S. 171, 61 L. Ed. 229, 37 S. Ct. 34 (1916), subject to the Full Faith and Credit Clause and other constitutional re-

---

[7] This Court in *Galveston, H. & S. A. R. Co.* v. *Wallace*, 223 U.S. 481, 56 L. Ed. 516 (1911), said: "... But jurisdiction is not defeated by implication ..." 223 U.S. 481, at p. 489.

strictions. The Full Faith and Credit Clause does not compel a state to adopt any particular set of rules of conflict of laws; it merely sets certain minimum requirements which each state must observe when asked to apply the law of a sister state." 345 U.S. 514, at p. 516.

In the case of *Pacific Employers Insurance Co.* v. *Industrial Acci. Comm., supra,* the Court said:

"... and the law of neither [State] can by its own force determine the choice of law to be applied in the other [State]." 306 U.S. 493, at p. 500.

There was a conflict of laws or choice of laws problem in Alabama when the DeKalb County Circuit Court was asked to enforce the Georgia Compensation Act. The Court of Appeals, by its judgment, denied to Alabama the right to adopt such rules of conflict of laws as it chooses. Instead, it permitted the law of Georgia to determine the choice of laws in Alabama.

The *Green* case, *supra,* which the Court of Appeals said controlled its decision, was an original action in the United States District Court in Mississippi. Petitioner's suit here is on a *judgment* in a Federal District Court in Alabama which was rendered by an Alabama Circuit Court.

The Court in the *Green* case stated:

"... *The Georgia decisions* [*Grice* v. *United States Fid. & Guaranty Co.*, 187 Ga. 259, 200 S. E. 700; *Blue Bell Globe Mfg. Co.* v. *Baird*, 64 Ga. App. 347, 13 S. E. 2d 105; *Echols* v. *Chattanooga Merc. Co.*, Ga. App., 38 S. E. 2d 675] settle it that the remedy for enforcement of the rights conferred by the Georgia Workmen's Compensation Act Code 1933, is an exclusive one which can be afforded only by the State Board of Workmen's

Compensation in a proceeding brought before it as the statute provides (Sec. 114-103)." (Emphasis supplied.)

Neither the "Georgia decisions" nor the Georgia statute[8] can settle the issue arising from Petitioner's suit on his *judgment*[9] even though both may be controlling in Georgia or Mississippi.

This Court in *Pacific Employers Ins. Co.* v. *Industrial Acci. Comm., supra* said:

". . . the full faith and credit clause does not require one state to substitute . . . the conflicting statute of another state, *even though that statute is of controlling force in the courts of the state of its enactment with respect to the same persons and events.*" 306 U.S. 493, at p. 502. (Emphasis supplied.)

The United States District Court in Mississippi uses the conflict of laws or choice of laws of Mississippi.[10] The conflict of laws or choice of laws of Mississippi must have been

---

[8] "The rights and remedies herein granted to an employee where he and his employer have accepted the provisions of this Title, agreeing respectively to accept any pay compensation on account of personal injury or death by accident, shall exclude all other rights and remedies of such employee, his personal representative, parents, dependents, or next of kin, at common law or otherwise, on account of such injury, loss of service or death." Chapter 114-103, *Georgia Code*.

[9] This Court in *Kenny* v. *Loyal Order of Moose*, 252 U.S. 410, 64 L. Ed. 638 (1920), when it was confronted with enforcing a *judgment*, said:

". . . Therefore the fact that here the original cause of action could not have been maintained in Illinois [Georgia or Mississippi] *is not an answer to a suit upon* the *judgment*." 252 U.S. 410, at p. 415. (Emphasis supplied.)

[10] *Erie R.R. Co.* v. *Thompkins*, 304 U.S. 64, 82 L. Ed. 1188 (1938); *Griffin* v. *McCoach*, 303 U.S. 498, 85 L. Ed. 1481 (1941); 6 *Ala. L. Rev.* 84 (1953).

to look to the foreign law (Georgia Law) for both substantive and procedural matters.

No matter what the conflict of laws or choice of laws may be in Mississippi, it *cannot* dictate to Alabama what its conflict of laws or choice of laws should be.[11]

Nevertheless, the Court of Appeals, by its decision, has permitted the conflict of laws or choice of laws of Mississippi to designate the conflict of laws in Alabama. Further, it has permitted Mississippi to determine what effect Alabama has to accord to the "exclusive" statute of Georgia (*Georgia Code*, 114-103).

In fact, the Georgia Compensation Act (Sec. 114-103), the court referred to in the *Green* case as making the Georgia Act "exclusive" has no enforceability as a defense to any state except Georgia *unless* the sister (forum) state *desires to recognize* it as a defense, as the Mississippi Court did in *Green*.

The Supreme Court in *Carroll* v. *Lanza, supra,* said:

> "Missouri can make her Compensation Act exclusive if she chooses, and *enforce it as she pleases within her borders*. Once that policy is extended to other States, different considerations come into play." 349 U.S. 408, at p. 413. (Emphasis supplied.)

If it were the policy of Mississippi to give the "exclusive" effect to the Georgia Act, it was *not* the policy of Alabama to recognize the "exclusive" effect in this case, and the Alabama court was not compelled to do so by the United States Constitution.

---

[11] *Pacific Employers Insurance Company* v. *Industrial Acci. Comm., supra; Wells* v. *Simonds Abrasive Company, supra; Richards* v. *U. S.*, 369 U.S. 1, 7 L. Ed. 2d 492 (1962).

To what extent, extraterritorially, may a provision in a statute of a state govern sister forum states? This question has been thoroughly explored and answered by the United States Court of Appeals for the Second Circuit in *Pearson* v. *Northeast Airlines, Inc.*, 309 F. 2d 553 (1962). There, plaintiff's action in New York was based on Massachusetts law, and the New York court disregarded the limitations on damages Massachusetts placed on the cause of action.

Writing for the majority, Judge Kaufman said:

> ". . . But we cannot concede that Massachusetts has a constitutionally protected claim to the unqualified application of its statute in cases with an overwhelmingly interstate flavor. The adoption of such a principle would effect an incursion by Massachusetts upon the public policy of New York far more serious than the purported incursion upon Massachusetts policy which we have upheld today. If Massachusetts local rules must, by constitutional compulsion, govern every aspect of a transaction so intimately affecting the interest of New York, then the concept of full faith and credit is being utilized as an extraordinary example of oppressiveness to legitimate and lawful state interests." 309 F. 2d 553, at p. 561.

Referring to *Alaska Packers Asso.* v. *Industrial Acci. Comm.*, *supra*, the Second Circuit also noted ". . . In that case [*Alaska Packers*] the Court expressly recognized that *rights asserted under* the *statute* of *one state may* necessarily *be denied* or *qualified* by the law of another." 309 F. 2d 553, at p. 560. (Emphasis supplied.)

In Petitioner's case the only qualification the forum state (Alabama) has made to the Georgia Compensation Act was to afford Petitioner a hearing before a Circuit Court rather than before a Board in Georgia.

The DeKalb County Circuit Court found from the evidence presented that Petitioner was "totally and permanently disabled" (R. 13-14; Resp. Ex. B). When an employee covered by the Georgia Compensation Act is "totally and permanently disabled," the Act has a section[12] dealing expressly with total disability payments which any intelligent person can compute; and the DeKalb County Circuit Court did not exceed the Ten Thousand Dollar ($10,000.00) limitation (R. 13-14; Resp. Ex. B) imposed by this section. What detriment has Respondent suffered by Petitioner being accorded a hearing in a Circuit Court in Alabama?

Respondent may argue that *Carroll* v. *Lanza* stands for one proposition alone; that a foreign compensation act would not bar a common-law action in a sister state. But this Court in *Carroll* v. *Lanza* said:

> "For we *write not only this case* and this case alone *but for this type of case.*" 349 U.S. 408, at p. 413. (Emphasis supplied.)

Petitioner's case is the *same* "type" case as *Carroll* v. *Lanza,* in which the compensation act was asserted as a defense. Here, and in *Green,* Petitioner sought affirmative relief under the Georgia Compensation Act, and the Court of Appeals has used the "exclusive" word of the Georgia Act as a "talismanic" word to deny Petitioner his just and

---

[12] "When the incapacity to work resulting from an injury is total, the employer shall pay or cause to be paid, as hereinafter provided for, to the employees during such total incapacity a weekly compensation equal to 60 per cent of his average wages, but not more than $30.00 per week, nor less than $10.00 per week, except when the weekly wage is below $10.00 then the regular wages on the date of the accident shall be the weekly amount paid, and in no case shall the period covered by such compensation be greater than 400 weeks nor shall the total amount of compensation exceed $10,000.00." Chapter 114-404, *Georgia Code.*

due recovery under the Georgia Compensation Act. Stated another way: the procedural aspect of the Act is *now* raised as a defense to Petitioner's *judgment*.

Did not the words in *Carroll* v. *Lanza* authorize the DeKalb County Circuit Court to "supplement" the Georgia Compensation Act by using its own procedure (the court action) when the Supreme Court said:

> "...the *Pacific Employers Ins. Co.* case teaches, she [forum state] may *supplement* it [foreign compensation act] or displace it with another, insofar as remedies for acts occurring within her boundaries are concerned. Were it otherwise, the State where the injury occurred would be powerless to provide any remedies or safeguards to nonresident employees working within her border . . ." 349 U.S. 408, at p. 414. (Emphasis supplied.)

The Court in *Pearson*, in disregarding the limitation of damages in the Massachusetts cause of action, stated that the Supreme Court had held that the forum state could ignore the statute of limitations in a foreign cause of action,[13] and the court stated there was no constitutional distinction between a statute of limitations and dollar limitations. How it can be argued here that the forum state (Alabama) could not ignore the *permissive* provisions[14] of the Georgia Compensation Act concerning a hearing before the Georgia Board rather than the Court in Alabama. When it is constitutional to "displace" the entire foreign compensation act or "supplement" it;[15] ignore the

---

[13] *Wells* v. *Simonds Abrasive Co.*, *supra*.

[14] Chapter 114-706, *Georgia Code*.

[15] *Carroll* v. *Lanza*, *supra*.

statute of limitations;[16] and disregard the dollar limitation of a foreign cause of action;[17] then what is unconstitutional about the Alabama court's action in this case?

III.

The Court of Appeals Denied to the Alabama Court the Right to Determine What Aspects of the Georgia Compensation Act Were Matters of Procedure and What Were Substantive Matters.

It has long been the rule of this Court and the Alabama courts[18] that matters of procedure are governed by the local law or law of the forum while the substantive matters are governed by the foreign law.

In 1882 the Supreme Court in *Pritchard* v. *Norton*, 106 U.S. 124, 27 L. Ed. 104, said:

> "... a civilized State ... adheres to its own system of formal judicial procedure and remedies. And ... the law of the procedure and remedy, ... *must be* domestic and *local*. In respect to the latter, the foreign law is rejected; but how and where to draw the line of precise classification is not always easy to determine." 106 U.S. 124, at p. 129. (Emphasis supplied.)

The state of the forum, Alabama in this case, determines "where to draw the line of precise classification."

In *Moran* v. *Pittsburg-Des Moines Steel Co.*, 166 F. 2d 908 (3rd Cir., 1948), cert. den. 334 U.S. 846, 92 L. Ed. 1770, the court said:

---

[16] *Wells* v. *Simonds Abrasive Co.*, *supra*.

[17] *Pearson* v. *Northeast Airlines, Inc.*, *supra*.

[18] *Dollahite-Levy Company* v. *Overton*, 233 Ala. 12, 133 So. 903 (1931).

"... Likewise ... the application of ... conflict of laws determining whether a given question is to be characterized as substantive ... or procedural ... the law of the forum, controls ..." 166 F. 2d 908, at p. 910.

In *Kilberg* v. *Northeast Airlines, Inc.*, 9 N.Y. 2d 34, 172 N.E. 2d 526 (1961), the New York Court of Appeals was concerned with a death case filed in a New York court and arising out of the same air disaster involved in the *Pearson* case. The crash causing death occurred in Massachusetts whose law contained a limitation on the amount of damages in death actions. Recognizing the significant interests of New York in such causes of action, it was held proper for the New York forum to disregard the Massachusetts damage limitation. The court recognized the questions as procedural rather than substantive and applied the New York law in fixing the amount of damages recoverable,[19] saying:

"Some of the *older* Federal cases ... give defendants the benefit of limitations of damages found in the law of the place of wrong, regardless of where the actions were brought. Those cases, however, are not binding on us and *do not bring into play* the *full faith* and *credit* clause of the Constitution, Art. 4, Sec. 1 (see *Wells* v. *Simonds Abrasive Company*, 345 U.S. 514, 73 S. Ct. 856, 97 L. Ed. 1211)." 172 N.E. 2d 526, at p. 529. (Emphasis supplied.)

---

[19] Judge Kaufman seemed to disagree with determinant of substantive versus procedural and said:

"... This [disregarding certain provisions of a foreign statute] is usually accomplished by referring to the statute of limitations as involving mere 'procedure' and not 'substantive'. The niceties of such legal legerdemain do not concern us; it is the result that speaks loudly." 309 F. 2d 553, at p. 558.

It was not a violation of the Full Faith and Credit clause for the Alabama Court to determine that the Georgia Compensation Act's permissive requirement that Petitioner file his claim before the Board in Georgia was merely procedural. Furthermore, Petitioner's *judgment* was not subject to collateral attack.

Respondent argued below that the procedure and right are so closely related that the Alabama court could not enforce Petitioner's claim for damages; or that the forum (Alabama) had to recognize the *permissive* provision for a Board hearing in Georgia.

In answer to Respondent's argument, the court in *Pearson* said:

> "We are *directed to no precedent*, and are unaware of any compelling logic independent of precedent, *which requires a state to enforce* such *statutory qualifications whenever* it *chooses to recognize a foreign-based cause of action* . . ." 309 F. 2d 553, at p. 558. (Emphasis supplied.)

Further the courts in *Pearson*, *supra*, and in *Babcock* v. *Jackson*,[20] 12 N.Y. 2d 473, 191 N.E. 2d 279 (1963) said, that to give any weight to this argument, the courts would have to recognize the relics of the vested rights theory which has long been discredited.

Judge Fuld in *Babcock* said, in regard to the vested rights theory:

> ". . . 'The vice of the vested rights theory,' it has been aptly stated, 'is that it affects to decide concrete cases upon generalities which do not state the practical considerations involved' . . . More particularly, . . . the

[20] The accident occurred in Ontario, and the Ontario law was alleged; however, the court of the forum (New York) held it was proper to ignore the defense of the Ontario guest statute.

> theory ignores the interest which jurisdictions other than that where the tort occurred may have in the resolution of particular issues." 191 N.E. 2d 279, at p. 281.

The same logic was expressed by this Court in *Carroll* v. *Lanza, supra*:

> "Missouri can make her Compensation Act exclusive if she chooses, and enforce it as she pleases within her borders. Once that policy is extended to other States, different considerations come into play." 349 U.S. 408, at p. 413.

After weighing the "different considerations" in this case, the Alabama Court—not the Court of Appeals—determined the effect it would accord to the various provisions of the Georgia Act. The *judgment* it rendered in accordance therewith should be enforced.

If the forum state (Alabama) is prohibited from determining what aspects of a foreign statute are procedural and substantive, then the state of the forum (Alabama) would also be prohibited from providing protection for its citizens injured within its borders and who may become public charges. See *Alaska Packers Asso.* v. *Industrial Acci. Comm., supra;* and *Pacific Employers Ins. Co.* v. *Industrial Acci. Comm., supra.*

If the decision of the Court of Appeals for the Fifth Circuit here and in *Green* is to stand, then, as Judge Kaufman said in *Pearson*:

> "... it is the first decision of 'freeze' into constitutional mandate a choice-of-law rule derived from what may be described as the Ice Age of conflict of laws jurisprudence—at a time when that jurisprudence is in an advanced stage of thaw ..." 309 F. 2d 553, at p. 557.

IV.

The Court of Appeals Was in Error in Denying Full Faith and Credit to the Judgment of the Circuit Court of DeKalb County, Alabama.

In *Pacific Employers Ins. Co.* v. *Industrial Acci. Comm.*, *supra*, the Supreme Court said:

> "... either state ... would be *free* to *adopt* and *enforce* the *remedy provided* by the *statute* of the *other* [state] ..." 306 U.S. 493, at p. 500. (Emphasis supplied.)

And in *Cooper* v. *Newell*, 173 U.S. 555, 43 L. Ed. 808 (1898), this Court said:

> "... courts of the United States are bound to give to the judgments of the state courts the same faith and credit that the courts of one state are bound to give to the judgments of the courts of her sister states." 173 U.S. 555, at p. 567.

Petitioner's *judgment* awarded by the DeKalb County Circuit Court should be accorded Full Faith and Credit[21] by this Court and is not subject to collateral attack once this Court said the court of the forum (Alabama) could *adopt* and *enforce* the Georgia Compensation Act.

The DeKalb County Circuit Court was also confronted with a Full Faith and Credit problem when it was asked to enforce the Georgia Compensation Act. The Supreme

---

[21] See 28 U.S.C.A., Sec. 1738; Article 4, Sec. 1 of the United States Constitution provides:

> "Full Faith and Credit shall be given in each State to the public Acts, Records and Judicial Proceedings of every other state. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved and the Effect thereof."

Court in *Alaska Packers Assoc.* v. *Industrial Acci. Comm., supra,* said:

> "... rights claimed under one statute prevail only by denying effect to the other. In both the conflict is to be resolved, not by giving automatic effect to the full faith and credit clause, compelling the courts of each state to subordinate its own statutes to those of the other, *but by appraising the governmental interests of each jurisdiction, and turning the scale of decision according to their weight.*" 294 U.S. 532, at p. 547. (Emphasis supplied.)

When the DeKalb County Circuit Court appraised the "governmental interests" of Alabama and Georgia, the "scale of decision" was balanced in favor of Alabama and Petitioner. Then the Circuit Court *adopted* and *enforced* the damages provided for in the Georgia Compensation Act just as the Supreme Court in *Pacific Employers Ins. Co.* v. *Industrial Acci. Comm., supra,* said the court of the forum (Alabama) could do.

Once the Alabama Court had appraised the "governmental interests" of both states and rendered a *judgment* for Petitioner, then it was error for the Court of Appeals not to accord "Full Faith and Credit" to the *judgment.*

The court in the *Green* case, *supra,* which the Court of Appeals said controlled Petitioner's suit on his *judgment,* for all intents and purposes was a Mississippi Court (United States District Court in Mississippi). How can a Mississippi Court weigh the "governmental interests" of Alabama and Georgia? The *Alaska Packers* case said for the state confronted with the "Full Faith and Credit" problem to weigh the "governmental interests" and *not a third disinterested state.*

It is the State of Alabama that has the duty to prevent *its citizens* from becoming public charges and not the State of Mississippi or the State of Georgia.[22]

Conclusion

For the reasons set out below it is respectfully submitted that this Court should reverse the order of the Court of Appeals for the Fifth Circuit.

Petitioner's *judgment* was not subject to collateral attack by the Court of Appeals. The Circuit Court of DeKalb County, Alabama, weighed the significant or "governmental interests" of the State of Alabama. Once the Circuit Court had weighed these interests and determined that the Alabama interest prevailed, then it was proper for the Circuit Court to qualify the *permissive* hearing provision of the Georgia Compensation Act and afford Petitioner a hearing in the Alabama Court.

The Court of Appeals erred in prohibiting the Alabama Court from enforcing the Georgia Compensation Act when it required the Alabama Court to use the conflict or choice of laws of Mississippi to weigh the "governmental interests" of Alabama in preventing its citizens from becoming public charges.

The Court of Appeals erred in not according Full Faith and Credit to Petitioner's *judgment* and permitting it to be collaterally attacked when said *judgment* was rendered in accordance with the reasoning of the decisions of this Court and without any constitutional rights denied to Respondent.

Granting an order by this Court reversing the decision of the Court of Appeals for the Fifth Circuit will delete

---

[22] *Alaska Packers Assoc.* v. *Industrial Acci. Comm., supra; Pacific Employers Ins. Co.* v. *Industrial Acci. Comm., supra; Carroll* v. *Lanza, supra.*

the inconsistency of the decisions of the Court of Appeals for the Second Circuit in *Pearson, supra,* and the decision of the Court of Appeals here.

Further such an order by this Court would align the decisions of the Court of Appeals for the Fifth Circuit with the Court's decisions in *Alaska Packers Asso.* v. *Industrial Acci. Comm., supra; Pacific Employers Ins. Co.* v. *Industrial Acci. Comm., supra; Carroll* v. *Lanza, supra.*

J. Terry Huffstutler
First National Building
Birmingham, Alabama
Counsel for Petitioner

Of Counsel:

Max C. Pope
Levine, Fulford, Gwaltney & Pope
510 Frank Nelson Building
Birmingham, Alabama

APPENDIX "A"

Constitutional and Statutory Provisions Involved

The Fourth Article, Section 1, of the United States Constitution is involved:

> "Full Faith and Credit shall be given in each State to the public Acts, Records and Judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

The Sixth Article, Section 143, of the Alabama Constitution is involved:

> "The Circuit Court shall have original jurisdiction in all matters civil and criminal within the state not otherwise excepted in this Constitution; but in civil cases, other than suit for libel, slander, assault and battery, and ejectment, it shall have no original jurisdiction except where the matter of sum in controversy exceed fifty dollars."

The following Alabama Statutes are involved:

> "Whenever, either by common law or statutes of another state, cause of action, either upon contract, or in tort, has arisen, in such other state against any person or corporation, the cause of action shall be enforced within the Courts of this state, in any county in which jurisdiction of the defendant can be legally obtained in the same manner in which jurisdiction could have been obtained if the cause of action had arisen in this state. *Alabama Code*, Tit. 7, Sec. 97 (1940) (Recomp. 1958).

> "*A. Controversy submitted to circuit court.* In case of a dispute between employer and employee or between the dependents of a deceased employee and his employer with respect to the right to compensation under articles 1 and 2 of this chapter, or the amount thereof,

either party may submit the controversy to the circuit court of the county which would have jurisdiction of a civil case in tort between the same parties. Such controversy shall be heard and determined by such judge or judges of said court as would hear and determine a civil action between the same parties arising out of tort and in case there is more than one judge of such court, such controversies shall be set and assigned for hearing under the same rules and statutes that civil actions in tort are set and assigned; such court may hear and determine such controversies in a summary manner. The decision of the judge hearing the same shall be conclusive and binding between the parties, subject to the right of appeal in this article provided for. *B. Jury Trial.* When wilful misconduct on the part of the employee is set up by the employer, as it is provided for herein, the employer may, upon appearing, demand a jury to hear and determine, under the direction of the court, the issues involved in this defense. If the employer fails to demand a jury upon appearing, the employee may demand a jury to try such issues, by filing his demand within five days after the appearance of the employer. When a jury is demanded by either party, the court must submit the issues of fact as to wilful misconduct set up by the employer to the jury, for a special finding of the facts subject to the usual powers of the court over verdicts rendered contrary to the evidence or the law, but the judge must determine all other questions involved in the controversy without a jury. Upon setting up such defense, the employer must serve a copy of the plea or answer, setting up the defense, upon the employee or his attorney of record. *C. Court always open.* For the purpose of hearing and determining controversies between employer and employee or the dependents of a deceased employee and the employer, arising under articles 1 and 2 of this chapter, the circuit court shall be deemed always in session. *D. Adverse claimants.* If at any time there are adverse claimants to compensation hereunder, the employer in submitting said claim to said circuit court may suggest in writing said claimants

and they shall be required to interplead and said court shall determine and decree to which claimant or claimants such compensation is justly due and said employer upon complying with the order of such judge, shall be released from the claims of any other claimants thereto. *E. Appeal by certiorari.* From such decree any aggrieved party may by certiorari within thirty days thereafter appeal to the Supreme Court of the Court of Appeals of Alabama." *Alabama Code,* Tit. 26, Sec. 297 (1940) (Recomp. 1958).

The following Georgia Statutes are involved:

1. "The rights and remedies herein granted to an employee where he and his employer have accepted the provisions of this Title, agreeing respectively to accept and pay compensation on account of personal injury or death by accident, shall exclude all other rights and remedies of such employee, his personal representative, parents, dependents, or next of kin, at common law or otherwise, on account of such injury, loss of service or death." Chapter 114-103, *Georgia Code.*

2. "When the incapacity to work resulting from an injury is total, the employer shall pay or cause to be paid, as hereinafter provided for, to the employee during such total incapacity a weekly compensation equal to 60 per cent of his average wages, but not more than $30 per week nor less than $10 per week, except when the weekly wage is below $10.00, then the regular wages on the date of the accident shall be the weekly amount paid, and in no case shall the period covered by such compensation be greater than 400 weeks, nor shall the total amount of compensation exceed $10,000." Chapter 114-404, *Georgia Code.*

3. "Where an accident happens while the employee is employed elsewhere than in this State, which would entitle him or his dependents to compensation if it had happened in this State, the employee or his dependents shall be entitled to compensation, if the contract of employment was made in this State, and if the em-

ployer's place of business is in this State or if the residence of the employee is in this State: Provided, his contract of employment was not expressly for service exclusively outside of the State: Provided, however, that if an employee shall receive compensation or damages under the laws of any other State, nothing herein contained shall be construed so as to permit a total compensation for the same injury greater than is provided for in this Title." Chapter 114-411, *Georgia Code.*

4. "Whenever any weekly payment has been continued for not less than 26 weeks, the liability therefor may, when the State Board of Workmen's Compensation deem it to be to the best interest of the employee or his dependents, or where it will prevent undue hardship on the employer or his insurance carrier, without prejudicing the interests of the employee or his dependents, be redeemed, in whole or in part, by the payment by the employer of a lump sum which shall be fixed by the Board, but in no case to exceed the commutable value of the future installments which may be due under this law: Provided, that the lump sum to be paid shall be fixed at an amount, which will equal the total sum of the probable future payments, reduced to their present value upon the basis of interest calculated at five per cent per annum." Chapter 114-417, *Georgia Code.*

5. "If, after 14 days from the date of the injury, or at any time in case of death, the employer and the injured employee, or his dependents reach an agreement in regard to compensation under this Title, a memorandum of the agreement in the form prescribed by the State Board of Workmen's Compensation shall be filed with the Board for approval as herein provided; otherwise such agreement shall be voidable by the employee or his dependents. If approved by the Board, thereupon the memorandum shall for all purposes be enforced by decree or judgment of the superior court, as herein specified." Chapter 114-705, *Georgia Code.*

6. "If the employer and the injured employee or his dependents fail to reach an agreement in regard to compensation under this Title, or if they have reached such an agreement which has been signed and filed with the State Board of Workmen's Compensation, and compensation has been paid, or is due in accordance therewith, and the parties thereto then disagree as to the continuance of any weekly payment under such agreement, either party may make application to the Board for a hearing in regard to the matters at issue, and for a ruling thereon. Immediately after such application has been received, the Board shall set a date for a hearing, which shall be held as soon as practicable, and shall notify the parties at issue of the time and place of such hearing. The hearing shall be held in the county where the injury occurred if the same occurred in this State, unless otherwise agreed between the parties and authorized by the Board. If the injury occurred without the State and is one of which compensation is payable under this Title, then the hearing above referred to may be held in the county of the employer's residence or place of business, or in any other county of the State which will, in the discretion of the Board, be the most convenient for a hearing. If either party in the matter of disagreement scheduled for a hearing desires to take evidence in any county of this State other than the county of the original accident and injury, of the county of the employee's residence, as the case may be, they may do so by making application either to the Board or the hearing member of said issues in dispute, and if in the discretion of the Board or the hearing member it is deemed that the evidence is material and necessary to a fair and just adjudication of said issue or issues. The Board or hearing member shall have authority to continue said hearings for the purpose of taking said evidence in any other county of this State, and shall either schedule the hearing for the taking of said evidence in any county of the State of Georgia, or shall direct that the evidence be taken by deposition under the rules now required for taking depositions in civil cases of this State: Provided that

if the Board or member directs the parties to take evidence by deposition, the party or parties taking said depositions shall forward the same to the secretary and treasury of the State Board of Workmen's Compensation in the same manner as depositions are filed with the clerks of the superior courts in other cases. If either party at issue desires to take the testimony of witnesses without the State the Board or the member may authorize any officer or employee of the authority charged with administering the workmen's compensation laws of the State where such testimony is to be taken to act as commissioner for the taking of the same, or it may direct the taking of such testimony under the same rules now pertaining to the taking of testimony of persons without the State in civil cases. After notice of a hearing has been given by the Board, either party may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories for the purpose of discovery, under the same requirements now provided for the taking of depositions upon oral examinations or written interrogatories in civil cases in the superior court." Chapter 114-706, *Georgia Code.*

The following Missouri Statute is involved:

"The rights and remedies herein granted to an employee, shall exclude all other rights and remedies of such employee, his wife, her husband, parents, personal representatives, dependents, heirs or next of kin, at common law or otherwise, on account of such accidental injury or death, except such rights and remedies as are now provided for by this chapter." Sec. 287, 120 (2), *Missouri Revised Statutes* (1959).